

In civil law as in criminal law there are what might be described as 'reasoning flaws'. These peculiar 'phenomena' exist in direct opposition to common sense. Whenever they occur we are supposed to bow our head in respect, not so much to the Law but the authority of the Law. This 'authority' sets the Law above and beyond the call of common sense. The law is upheld by 'those who know', lawyers and other experts who have been trained and are now paid in that pursuit.

The sceptical public note a few consistencies; eg that 'reasoning flaws' always favour those with the knowledge, expertise and authority to exploit them.

In cases of industrial disease compensation and the asbestos industry this is especially true where *B. Business versus A. Worker*. In this situation Mr A. Worker brings the action against Mr B. Business so the former is the Claimant and the latter becomes the Defender. As we would expect of the Law, defending parties are innocent until proven guilty; the Defender is therefore 'innocent until proven guilty' by the Pursuer, therefore the burden of proof is on Mr A Worker to establish the guilt of Mr Big Business.

And right at the outset we encounter one such 'reasoning flaw'. The vast majority of the subsidiary companies owned by this same Mr B. Business has long since been 'convicted' of a failure to implement the sort of safety measures that might prevent asbestos exposure.

When the lawyers acting on behalf of Mr A. Worker set the civil action in motion Mr Big Business does not offer a defence against the basic factor that he knowingly allowed the workforce to be exposed to a deadly poison. B. Business **cannot** deny it. This particular fact, that the workforce has been knowingly exposed to a deadly poison, is already established beyond reasonable doubt. The horrific effects of asbestos were known back in 1906 when the "British Parliamentary Commission were recommending better ventilation and other safety measures" in the workplace.

But none of the subsidiary companies owned by B. Business took the necessary precautions, thus in 1930 came the Home Office report on "widespread asbestos disease in U.K. factories". Even at this stage B. Business continued to neglect its obligation to the people employed by it. Most if not all of them continued to neglect the obligation for a further thirty years. Some are still doing it at the

present time. Therefore the Defender, the so-called 'innocent party', has no defence whatsoever to offer the courts. On this specific aspect of the case B. Business concedes defeat even prior to the commencement of court proceedings.

Now at this early stage in the action, as an ordinary member of the public, you may expect a rational end to the tale. B. Business has 'owned up'. There's no point 'going to court' if you've already conceded 'guilt'. How can you plead innocence and guilt at the same time? So you might reason this same Mr B. Business will offer Mr A. Worker compensation in an 'out-of-court' settlement and perhaps offer an apology for neglecting to advise A. Worker that by entering his employment there was always the strong likelihood that the final wage-packet was death by asbestos poisoning.

As an ordinary member of the public you might reason Mr Big Business would be better off trying to secure such an 'out-of-court' settlement. If not, and the case does go to court, the end result, following the civil suit, could be criminal proceedings. Surely if someone is seen to be so guilty through criminal act or neglect then our law and order system will find a way of exacting justice? If criminal proceedings were to be set in motion then perhaps B. Business would be charged with grievous bodily assault, or perhaps even murder in the many cases where the 'claimant' dies and they clearly can be held responsible.

The trouble is that B. Business is not a Mister at all but a mammoth business corporation with many subsidiary companies and great layers of shareholdings. And the function of B. Business is to protect these shareholdings. And the people who perform this function include a variety of professionals and specialists, including legal and medical experts, trained and paid in pursuit of the limits of the Law and the limits of the authority of the Law. One crucial aspect of their pursuit is the isolation and exploitation of 'reasoning flaws', also 'nonreasoning flaws', any kind of flaws at all, but the more "reasonable" they are the better.

In the case of *B. Business versus A. Worker* a peculiar 'phenomenon' occurs. The 'innocent party' within the Law remains innocent without - by which I mean prior to - court proceedings. But that burden of proof which would have settled on the shoulders of the 'claimant' had the case gone to trial, is now alive and kicking very forcibly. By an astute operation of the 'reasoning flaw' poor old A. Worker has become 'guilty'.

The first duty B. Business has is to protect its shareholdings. The asbestos industry is not in the business of 'giving money away'. Nor can it rely on its insurers

doing so. In this respect B. Business rarely has any insurers. As far back as 1918 Prudential Insurance Co. (USA) produced its "actuarial study showing premature death in the asbestos industry" and the other insurance companies started "increasing premiums and refusing insurance". So B. Business sets its own insurance aside. It puts away huge sums of money annually to take care of the many compensation claims it is forced to settle out-of-court.

A. Worker has become guilty. The lawyers acting on his/her behalf don't bother proving B. Business guilty. There is no need to. The fact of that guilt is clearly established and as we have seen the Defender (i.e. B. Business) has readily conceded there is no defence. Poor old A. Worker is now obliged to prove that s/he is suffering from an asbestos-related disease: and should this be substantiated it must also be established clearly and beyond all doubt that this particular disease was contracted as an effect of asbestos-exposure at that particular subsidiary owned by B. Business. The victim of industrial disease has to prove s/he is a victim of industrial disease.

Some ordinary citizens are surprised to discover that in the 'eyes' of those trained in pursuit of the law the medical profession is regarded as an amateurish body whose members are continually expressing opinions. In the world of the ordinary citizen these 'opinions' are to be found under the heading 'diagnoses'. But ordinary citizens are brought up to regard doctors as the keepers of a form of mystical knowledge, a group of benign individuals who know the internal workings of our bodies not simply better than we do ourselves, but in ways beyond our comprehension. Not only do they know our bodies they know about the diseases and blights that attack them. Thus when we experience pain off we go to see the doctor. The doctor tells us 'what's wrong' and prescribes 'medicine' which we believe is designed to alleviate the pain or else put 'right' that which is 'wrong'.

In some advanced cases we have to go to the doctor because the particular 'blight' we are experiencing has the effect of rendering us 'unfit for work'. The doctor writes down on a slip of paper the technical term for 'what's wrong' and this enables us to acquire 'sick leave' from our place of employment. If we happen to be unemployed this affirmation from the doctor we place in front of the officials at the Job Centre. These officials now know that for a certain period of time we are 'incommoded'. If by a fluke a job opportunity arises then we are unable to take advantage of it, at least until we 'get better'.

Where a patient is diagnosed suffering an asbestos-related disease it is rare

for such a patient to ever resume ordinary work. The disease is progressive, it can only get worse, and occasionally ends only in death, as in **mesothelioma** (a fatal disease caused only by exposure to asbestos).

In the case of *B. Business versus A. Worker* the medical profession is a body of experts subject to the control of other experts. This latter group consists of those who are trained in pursuit of the Law. We could describe doctors as 'judges' in the sense that they are the final arbiters of a person's health. If we stick to this then we might further describe those who are trained in pursuit of the Law as 'specialist-judges', they are the folk who judge the judges.

The most important part of Mr A. Worker's struggle for just settlement lies in convincing the 'specialist-judges' (who are acting on behalf of Mr B. Business) to accept the doctors' diagnoses. If the 'specialist-judges' successfully *avoid* having to accept the doctors' diagnoses then their client will successfully avoid paying compensation to the 'guilty' party, i.e. the person who is dying of asbestos-poisoning.

In fact the 'guilty party' won't even qualify for Disability Benefit from the DSS, whose Adjudicating Officers also come under the heading of 'specialist-judges'. They too have the authority to overrule 'medical opinion', and in 7 cases out of 10 in Scotland that's exactly what they do.

Circumstantial evidence of the probable cause of the violation (asbestos abuse) may be admissible but the authorities are not obliged to accept it as proof. In order to verify causation, to put the proof beyond reasonable doubt, i.e. render the proof 100%, victims must present the legal system, or the lawyers acting for the insurers or asbestos industry, with their lungs on a plate. (If they want to be sure of receiving their Disability Allowance from the DSS they must do likewise.) But cutting out your lungs is a messy business so many people prefer offering other evidence of asbestos exposure to back up 'medical opinion' (i.e. the diagnosis). This they must do by finding two witnesses from each and every workplace they were ever employed.

That's what the state demands. A man aged 65, having left school at 14, is forced to trace all the way back through his forty one years of working life. Unless dead. In which case his widow must don the Sherlock Holmes deerstalker if she still wishes to continue the battle with the lawyers, the insurers and the asbestos industry.

That's one of the problems with circumstantial evidence, it can't be gathered

immediately, it takes time and effort. A typical claim for compensation lasts from 4 to 6 years. Unlucky for the person diagnosed mesothelioma who has less than 9 months to live from that first diagnosis. Which is why the majority of people dying from this specific cancer throw away the deerstalker and climb aboard the operating table and plead with the surgeon to cut open their diseased body and thus substantiate the previous findings, the doctors' original diagnosis, i.e. the 'opinion' of the medical profession.

As many as SEVEN doctors can have their diagnosis legally "ruled out" as "insufficient evidence" by the investigating team who act on behalf of Mr B. Business. (And back at the DSS, that other 'specialist-judge', the Adjudicating Officer, is also empowered to overrule the same SEVEN doctors and reject a claim for Disability Allowance from the same person dying of cancer.)

Legal matters are always expedited by providing physical proof. Not only does this give evidence that the disease exists, it provides 'causation'. Causation offers a 'proof' that is not only 'beyond all reasonable doubt', it is beyond any sort of doubt known to man or woman.

Causation is a truly unimpeachable source, god-like in its perfection, providing both cause and effect at one and the same time: the asbestos fibre and a portion of cancerous flesh, 'causal energy' in all its glory. Those idealistic young lawyers coming straight from the philosophy department of their finishing school might want to win their clients' case without having their body cut apart - perhaps by a mixture of medical diagnosis, evidence of exposure, plus of course their obviously diseased client - but they would be as well offering a proof for the existence of God; if they can do the one they can do the other. The Law is not an ass, in the true spirit of the Anglo-American empiricist tradition it remains a Skeptik to the bitter end.

Or does it? The good thing about the Law is it's malleability. This is why we require judges. Judges are people who make decisions in favour of one or the other, in cases of this, that and the next thing. They accept or reject, affirm or deny. The final decision is theirs. We are to have faith in our judges who always act in the best interest of the community-at-large, the public as a whole, society in all its multi-faceted entirety.

One reason why so many A. Workers who aren't already diagnosed mesothelioma prefer to avoid climbing aboard the operating table is that it is highly probable they will die as an effect of the act of providing this Unimpeachable Proof;

this because the surgeon's tampering with their diseased flesh can result "in a process known as metastasis... The consequence is a precipitation of acceleration of the cancer and death in the form of metastatic, secondary and tertiary tumours follow swiftly, usually within a period of not more than 44 weeks." Which is a pity for A. Worker but not for B. Business, especially here in Scotland where a large proportion of financial liability will die with the victims who vainly seek justice, or else compensation from those who knowingly administered the asbestos poison which is killing them. (Is the term 'killed' admissible or a breach of sub judice?1)

However, if a claimant chances to be dead prior to settlement and to being cut open by the surgeon's knife the deceased's family and supporters have the opportunity of setting a pathologist on the body. Unless the person has died on a Friday night and is being cremated on the following Monday or Tuesday because the state doesn't provide weekend autopsies. Thus the one chance the widow has of proving 100% causation goes up in smoke. She could sweep out the crematorium furnace for asbestos fibres which are of course indestructible and present them in beside her man's ashes but who's to say she wouldn't have planked them there; she might have found them in the street and slipped them in to attack poor old B Business, at least this is what their lawyers would be duty-bound to consider, and in this event it would be incumbent for the widow to prove she had not slipped into the mortuary with a handful of any old ashes.

Instead of doing all of that the widow has to don the deerstalker along with the weeds and get to work sleuthing back through the forty odd years for each pair of witnesses from each and every workplace the victim was ever fortunate enough to find employment. And if she doesn't begin immediately she risks losing the claim by the time-limit the Law sets on such things.

The validity of any proof is always determined by the authorities. They will not for one moment deny that asbestos attacks the lungs, colon, larynx, stomach, chest and heart. But they will dispute the actual fatality in-itself, that that particular death was due to asbestos poisoning. Who's to say what the final cause of death actually was? Maybe it was something else altogether, especially a something that doesn't result in liability from the asbestos industry. Every rule proves the exception in civil law with respect to industry versus victims of industry; and authority always favour the violator, unless forced to do otherwise.